

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KELORA SYSTEMS, LLC,

Plaintiff,

v.

TARGET CORPORATION; OFFICEMAX  
INCORPORATED; SHOPKO STORES OPERATING  
CO., LLC; BRIGGS & STRATTON  
CORPORATION; CHELSEA & SCOTT, LTD.,  
d/b/a ONE STEP AHEAD & LEAPS AND  
BOUNDS; NATIONAL BUSINESS FURNITURE,  
LLC; BUYONLINENOW, INC.; ROCKLER  
COMPANIES, INC.; IDW, LLC, d/b/a ID  
WHOLESALE; 1-800-FLOWERS.COM, INC.;  
PC CONNECTION, INC.; EASTBAY, INC.;  
MASON COMPANIES, INC. d/b/a MARYLAND  
SQUARE; AMAZON.COM, INC.; DELL, INC.;  
OFFICE DEPOT, INC.; NEWEGG INC.;  
COSTCO WHOLESALE CORPORATION;  
HEWLETT-PACKARD DEVELOPMENT COMPANY,  
L.P.; and CIRCUITCITY.COM INC.,

Defendants.

No. C 11-01548 CW

ORDER DENYING  
DEFENDANT DELL,  
INC.'S MOTION TO  
DISMISS  
(Docket No. 213)

Plaintiff Kelora Systems, LLC, charges Defendants Target Corporation; OfficeMax Incorporated; ShopKo Stores Operating Co., LLC; Briggs & Stratton Corporation; National Business Furniture, LLC; Rockler Companies, Inc.; 1-800-Flowers.com, Inc.; PC Connection, Inc.; Mason Companies, Inc., doing business as Maryland Square; Amazon.com, Inc.; Dell, Inc.; Office Depot, Inc.; Newegg Inc.; Costco Wholesale Corporation; Hewlett-Packard Development Company, L.P.; and CircuitCity.com, Inc., with infringement of U.S. Patent No. 6,275,821 ('821 patent). Defendant Dell, Inc. moves to dismiss the patent infringement claim Kelora brought against it.

1 No other Defendant joins Dell's motion. The motion will be decided  
2 on the papers. Having considered the papers submitted by the  
3 parties, the Court DENIES Dell's motion.

4 BACKGROUND

5 The '821 patent, which is entitled, "Method and System for  
6 Executing a Guided Parametric Search," claims a "process for  
7 identifying a single item from a family of items." '821 patent,  
8 Abstract. The invention is intended "to provide a guided  
9 parametric search to isolate a subfamily of items within a family  
10 of items based on alternatives associated with each item." Id.  
11 3:36-39. Kelora alleges that Defendants "have infringed and  
12 continue to infringe the '821 patent by, inter alia, making and  
13 using parametric search systems, including web-based parametric  
14 search systems, and performing parametric searches that infringe  
15 the '821 patent." Am. Compl. ¶ 28.

16 Kelora initiated this lawsuit in the Western District of  
17 Wisconsin on November 8, 2010. On November 23, 2010, Kelora filed  
18 an amended complaint, which named twenty Defendants. However,  
19 pursuant to various stipulations, Kelora's claims against IDW, LLC;  
20 Chelsea & Scott, Ltd. d/b/a One Step Ahead & Leaps and Bounds;  
21 Buyonlinenow, Inc.; and Eastbay, Inc., have been dismissed.  
22 (Docket Nos. 37, 64, 65 and 141.) On November 29, 2010, Defendant  
23 Mason Companies answered Kelora's complaint and counterclaimed for  
24 a declaratory judgment of non-infringement and invalidity. Kelora  
25 has answered Mason's counterclaim.

26 On March 24, 2011, the Wisconsin district court granted  
27 Defendants' motions to transfer this action to this judicial  
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1 district. The court did not rule on various Defendants' motions to  
2 dismiss Kelora's complaint for failure to state a claim, leaving it  
3 to this Court "to determine in the first instance whether the  
4 complaint fails to satisfy Fed. R. Civ. 8 . . . ." Order of Mar.  
5 24, 2011, at 2. After the case was transferred into this district  
6 and assigned to this Court, only Dell renewed its motion to  
7 dismiss.

#### 8 LEGAL STANDARD

9 A complaint must contain a "short and plain statement of the  
10 claim showing that the pleader is entitled to relief." Fed. R.  
11 Civ. P. 8(a). When considering a motion to dismiss under Rule  
12 12(b)(6) for failure to state a claim, dismissal is appropriate  
13 only when the complaint does not give the defendant fair notice of  
14 a legally cognizable claim and the grounds on which it rests.  
15 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In  
16 considering whether the complaint is sufficient to state a claim,  
17 the court will take all material allegations as true and construe  
18 them in the light most favorable to the plaintiff. NL Indus., Inc.  
19 v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).<sup>1</sup> However, this  
20 principle is inapplicable to legal conclusions; "threadbare  
21 recitals of the elements of a cause of action, supported by mere  
22 conclusory statements," are not taken as true. Ashcroft v. Iqbal,

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24 <sup>1</sup> "A motion to dismiss for failure to state a claim upon which  
25 relief can be granted is a purely procedural question not  
26 pertaining to patent law." McZeal v. Sprint Nextel Corp., 501 F.3d  
27 1354, 1355-56 (Fed. Cir. 2007). Thus, the Federal Circuit applies  
the "the law of the regional circuit" to determine whether a  
district court properly granted a motion to dismiss under Rule  
12(b)(6). Id. at 1356 (citing C & F Packing Co., Inc. v. IBP,  
Inc., 224 F.3d 1296, 1306 (Fed. Cir. 2000)).

1 \_\_\_\_ U.S. \_\_\_\_, 129 S. Ct. 1937, 1949-50 (2009) (citing Twombly, 550  
2 U.S. at 555).

3 DISCUSSION

4 Dell contends that Kelora has not plead sufficient facts to  
5 support its claim for patent infringement. Kelora contends that  
6 its complaint conforms to Civil Form 18, provided in the Appendix  
7 of the Federal Rules of Civil Procedure and that, under the Federal  
8 Circuit's decision in McZeal, it states a claim for patent  
9 infringement.

10 In McZeal, the Federal Circuit noted that Civil Form 16, Civil  
11 Form 18's predecessor, set forth "a sample complaint for patent  
12 infringement" and contained the following elements: "1) an  
13 allegation of jurisdiction; 2) a statement that the plaintiff owns  
14 the patent; 3) a statement that defendant has been infringing the  
15 patent 'by making, selling, and using [the device] embodying the  
16 patent'; 4) a statement that the plaintiff has given the defendant  
17 notice of its infringement; and 5) a demand for an injunction and  
18 damages." 501 F.3d at 1356; see also Fed. R. Civ. P. 84 ("The  
19 forms in the Appendix suffice under these rules and illustrate the  
20 simplicity and brevity that these rules contemplate."). Here,  
21 Kelora has alleged facts that satisfy these elements. Kelora  
22 alleges that Dell infringed and continues to infringe the '821  
23 patent, which discloses an invention that can be used over the  
24 Internet "as an electronic catalog, providing an electronic  
25 alternative to updating and distributing product and/or service  
26 information." '821 patent, 4:7-9. Kelora further pleads that the  
27 alleged infringement arises through Dell's use of "web-based  
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1 parametric search systems." Am. Compl. ¶ 28. This background is  
2 sufficient to provide Dell with notice as to what Kelora believes  
3 to be the alleged infringing activity.

4 Accordingly, Kelora states a claim for patent infringement,  
5 and Dell's motion must be denied.

6 CONCLUSION

7 For the foregoing reasons, the Court DENIES Dell's motion to  
8 dismiss. (Docket No. 213.) A case management conference will be  
9 held on May 31, 2011 at 2:00 p.m.

10 IT IS SO ORDERED.

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12 Dated: May 31, 2011



13 CLAUDIA WILKEN  
14 United States District Judge  
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